

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ILLINOIS
EAST ST. LOUIS DIVISION**

CATHERINE ALEXANDER,

Plaintiff,

-vs-

TAKE-TWO INTERACTIVE SOFTWARE, INC.,
2K GAMES, INC.; 2K SPORTS, INC.; WORLD
WRESTLING ENTERTAINMENT, INC.;
VISUAL CONCEPTS ENTERTAINMENT;
YUKE'S CO., LTD.; AND YUKE'S LA, INC.,

Defendants.

CASE NO. 3:18-CV-966-SMY

**DEFENDANTS' RESPONSE TO PLAINTIFF'S MOTION FOR LEAVE TO FILE
OPPOSITIONS TO DEFENDANTS' MOTIONS TO EXCLUDE TESTIMONY OF
PLAINTIFF'S EXPERTS OUT OF TIME**

Defendants Take-Two Interactive Software, Inc., 2K Games, Inc., 2K Sports, Inc., Visual Concepts Entertainment (collectively "Take-Two"), Yuke's, Co., Ltd, and Yuke's LA, Inc. (collectively "Yuke's") and World Wrestling Entertainment ("WWE") (together with Yuke's and Take-Two, "Defendants") respectfully submit this response to Plaintiff Catherine Alexander's ("Plaintiff") December 9, 2019 motion for leave to file out of time her oppositions to Take-Two's *Daubert* motions (Dkt. No. 166) (the "Motion for Leave").

In accordance with the Amended Scheduling and Discovery Order and Your Honor's Case Management Procedures, Take-Two filed its motions to exclude Plaintiff's experts on November 8, 2019. *See* Dkt. No. 131 (setting dispositive motion deadline for November 8, 2019); J. Yandle Case Management Procedures at 4 (setting *Daubert* motion deadline as the same as the dispositive motions deadline). Plaintiff's responses to Take-Two's *Daubert* motions were due on November 22, 2019. S.D. Ill. Local Rule 7.1(g).

Despite these clear deadlines, just two days before Plaintiff's opposition deadline, Plaintiff contacted Defendants indicating that she intended to file a motion to extend the time for her oppositions. As a longer briefing schedule would necessarily delay a decision on Take-Two's *Daubert* motions and thereby interfere with Defendants' trial preparation and planning, Defendants asked whether Plaintiff would consent to a motion to stay pre-trial proceedings other than the pending motions to dismiss (Dkt. Nos. 89, 91), motion for summary judgment (Dkt. No. 141), and *Daubert* motions (Dkt. Nos. 143, 145). Plaintiff summarily declined Defendants' proposal. Leaving no time to work out a reasonable solution, Plaintiff filed her motion to extend (Dkt. No. 153) (the "Motion to Extend"). On November 20, 2019, Take-Two and Yuke's filed a motion to stay this case's pre-trial proceedings (Dkt. No. 155) (the "Motion to Stay"). WWE joined the motion on November 21, 2019 (Dkt. No. 156).

As Plaintiff's Motion to Extend has not been granted and Plaintiff did not file oppositions to Take-Two's *Daubert* motions by the Court-ordered deadline, Take-Two noted in its response to Plaintiff's Motion to Extend that Plaintiff's oppositions had not been timely filed. Plaintiff then filed her oppositions on December 9, 2019, the date that she requested in the Motion to Extend. Evidently acknowledging that Plaintiff missed the deadline and the Court had not granted permission to file her oppositions out of time, Plaintiff now moves this Court for leave to file her oppositions out of time, asserting that she did not anticipate the need to move the Court for an extension of time because Take-Two's *Daubert* motions were filed early and she thus "had no way of knowing [Take-Two] would be filing the subject motions." Mot. at 2, n.1.

This is simply not true. Take-Two's *Daubert* motions were filed on the date provided by the Amended Scheduling and Discovery Order. The *Daubert* motions were not filed early. Plaintiff should have anticipated the possibility of such a filing and the need to respond. Plaintiff

cannot unilaterally ignore court orders to get an extension that will only serve to delay proceedings further. Moreover, once the *Daubert* motions were filed, the deadline to respond should have been clear to Plaintiff.

Despite Plaintiff's unexcused failure to timely file her responses to Take-Two's *Daubert* briefs, Defendants still do not oppose providing Plaintiff more time to file her briefs. By filing them on December 9, however, she has taken for herself time not provided by the Court's scheduling order or Case Management Procedures. If the Court excuses her late filing, it only underscores the appropriateness of staying pre-trial proceedings. This will allow the Court time to consider the parties' various pending motions without requiring the expenditure of additional resources in preparation for trial. Accordingly, Defendants respectfully request that, if the Motion for Leave is granted, their Motion to Stay also be granted.

Dated: December 13, 2019

Respectfully submitted,

/s/ Dale M. Cendali

Dale M. Cendali (admitted *pro hac vice*)
Joshua L. Simmons (admitted *pro hac vice*)
Christopher T. Ilardi (admitted *pro hac vice*)
Miranda D. Means (admitted *pro hac vice*)
Kirkland & Ellis LLP
601 Lexington Avenue
New York, New York 10022
Telephone: (212) 446-4800
dale.cendali@kirkland.com
joshua.simmons@kirkland.com
christopher.ilardi@kirkland.com
miranda.means@kirkland.com

Michael J. Nester (#02037211)
Donovan Rose Nester P.C.
15 North 1st Street, Suite A
Belleville, Illinois 62220
Telephone: (618) 212-6500
mnester@drnpc.com

Attorneys for Defendants 2K Games, Inc., 2K Sports, Inc., Take-Two Interactive Software, Inc., Visual Concepts Entertainment, Yuke's Co., Ltd. and Yuke's LA, Inc.

/s/ Jerry McDevitt

Jerry McDevitt (admitted *pro hac vice*)

Curtis Krasik (admitted *pro hac vice*)

K&L Gates LLP

210 Sixth Avenue

Pittsburgh, PA 15222

Telephone: (412) 355-8608

jerry.mcdevitt@klgates.com

curtis.krasik@klgates.com

Attorneys for Defendant World Wrestling Entertainment, Inc.

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Case No. 3:18-cv-966-MJR-DGW

CERTIFICATE OF SERVICE

I hereby certify that on December 13, 2019, I electronically filed the foregoing DEFENDANTS' RESPONSE TO PLAINTIFF'S MOTION FOR LEAVE TO FILE OPPOSITIONS TO DEFENDANTS' MOTIONS TO EXCLUDE TESTIMONY OF PLAINTIFF'S EXPERTS OUT OF TIME with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to the following:

Anthony G. Simon	asimon@simonlawpc.com
Benjamin R. Askew	baskew@simonlawpc.com
Anthony R. Friedman	afriedman@simonlawpc.com
Carrie L. Roseman	croseman@simonlawpc.com
R. Seth Crompton	scrompton@allfela.com
Tracey Blasa	tblasa@allfela.com

/s/ Dale M. Cendali

Dale M. Cendali (admitted *pro hac vice*)
Kirkland & Ellis LLP
601 Lexington Avenue
New York, New York 10022
Telephone: (212) 446-4800

*Attorney for Defendants 2K Games, Inc., 2K Sports, Inc.,
Take-Two Interactive Software, Inc., Visual Concepts
Entertainment, Yuke's Co., Ltd. and Yuke's LA, Inc.*